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| NO. X06-UWY-CV-18-6046436 S | : | SUPERIOR COURT |
| ERICA LAFFERTY, ET AL | : | COMPLEX LITIGATION DOCKET |
| V. | : | AT WATERBURY |
| ALEX EMRIC JONES, ET AL | : | JUNE 17, 2019 |

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| NO. X06-UWY-CV-18-6046437 S | : | SUPERIOR COURT |
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**JONES DEFENDANTS' OBJECTION TO PLAINTIFFS' MOTION TO COMPEL (DOCKET NOS. 255 AND 259)**

The defendants' object to the plaintiffs' Motion To Compel Limited Court Ordered Discovery Requests, filed with this Court on 5/29/19 and 6/10/19[1]. The plaintiffs' tireless campaign to expand of the scope of this Court's discovery orders have become anything but "limited," and their most recent memorandum (docket no 259.00) is completely without merit. Therein, the plaintiffs' present the Court with 11 pages of citations from the depositions taken in Austin of Dr. David Jones, Tim Fruge, and Michael Zimmermann[2] to support their conclusion that, "the depositions clearly and

[1] The plaintiffs' filings correspond with docket entry numbers 255.00 and 259.00 respectively.
[2] See, P 259.00, p 3-13.

unequivocally establish that (1) extensive responsive data exists, (2) FSS controls, accesses, and uses the data, and (3) none of the data has been produced." Plaintiffs' Supplemental Memorandum in Support of Motion to Compel Adequate Responses to Plaintiffs' Limited Court Ordered Requests for Production, at 2 (hereinafter "P 259.00").

The analysis below demonstrates that this claim is patently false, and that the plaintiffs' notion that anything that the defendants have ever viewed, discussed, or conceptualized is discoverable material, to which they are entitled, has no legal support. Furthermore, the 11 pages of testimony presented in the plaintiffs' memorandum fail to establish any nexus between the testimony elicited and the evidence that plaintiffs so quixotically seek - marketing, analytics, and web traffic data relating to the Sandy Hook Shootings in December of 2014. Plaintiffs' questioning of the witnesses was so obfuscated and circuitous that the testimony used in support of their argument strains the bounds of relevance to the issues at bar and the stated purpose of those depositions: gleaning information on discoverable marketing/analytics/sales/web data related to Sandy Hook. The depositions fall far short of proving that the defendants are secreting away marketing materials that were once in their possession of or ever produced, as the plaintiffs would have this Court believe; much less that those materials are currently in their possession, custody, or control, as is required for materials to be discoverable.

Despite this fact, the defendants' have, since the filing of plaintiffs' objection 259.00 on 6/10/19, reached an agreement in which the they will *collect, produce, and disclose* Google Analytics materials to plaintiffs' attorneys. This voluntary collection, production, and disclosure of Analytics - that were not previously in the possession,

custody, or control of the defendants - is well beyond what they believe is required by the rules of discovery, or even the orders of this court. The defendants' tender this discovery to the plaintiffs in good faith, and in the interests of moving this litigation along. The defendants' in no way intend this voluntary disclosure to be a waiver of the legally mandated bounds of discovery.

As a result, the defendant's present this Court with the following analysis and objection to the plaintiffs' most recent discovery request. Enough is enough; and, as the following analysis and argument shows - the Plaintiffs' latest attempt to expand the bounds of discovery in this case is wholly unsupported in fact or law.

## I. THE DEFENDANTS HAVE NO DUTY TO *GATHER* MATERIALS NOT PREVIOUSLY PRODUCED IN THEIR REGULAR COURSE OF BUSINESS

The defendants respectfully request that this Court's discovery not order them to gather and generate documents - that were never produced in their regular course of business - for the purposes of aiding the plaintiffs' in this litigation. Discovery should be limited to documents that the defendants actually possess. The defendants should not now be ordered to produce this marketing data that they did not generate and had no duty to preserve.

The defendants recently disclosed the raw metadata for the results of each of the keyword searches conducted on FSS email servers. The plaintiffs did not find what they were looking for. They now ask this Court to order additional searches of Mr. Jones' phone; FSS applications such as: QuickBooks, Excel, NetSuite, and Word; and Google Analytics for additional keywords. The defendants respectfully request that the Court deny the plaintiffs latest attempted fishing expedition.

The plaintiffs' apparent theory, that these analytics/marketing/web traffic reports were produced and not shared internally by email, strains common sense. Keyword searches for the terms: Sandy Hook, Newtown, and Mass Shootings were all searched and disclosed to the plaintiffs. Any emails relating to these requested materials would have been present in those searches. This would have necessarily included marketing reports with those terms. That these marketing reports would have been produced, all relating to Sandy Hook, and not contained one of those keywords strains common sense. Furthermore, if the plaintiffs are contending that the defendants simply printed out these reports and distributed them physically to the concerned parties the defendant was under no obligation to preserve these materials, prior to the plaintiffs filing suit in May of 2018. The defendants should not now be ordered to produce this marketing data that they did not generate and had no duty to preserve.

**A. Legal Standard**

The Defendants are unaware of any Connecticut caselaw which requires a party to gather documents that were not previously in the party's possession, custody, or control in response to a request for production. Likewise, the Plaintiffs' motion to compel is devoid of any caselaw supporting this proposition. Because Connecticut caselaw on this type of complex e-discovery is relatively undeveloped, the defendant asks the Court to look to the federal rules of procedure and caselaw for guidance in settling this issue.

Federal Rule of Civil Procedure 34(a)(1) specifies that parties may only request the production of documents or electronically stored information (ESI) "in the responding party's possession, custody or control." Under the Federal Rules parties are not

obligated to recreate records that were destroyed in the ordinary course of business or that are in the possession of third parties.

In *Phillips v. Netblue, Inc.*, No. C-05-4401 SC, 2007 WL 174459, the U.S. District Court N.D. CA held that "[t]he fundamental factor is that the document, or other potential objects of evidence, must be in the party's possession, custody, or control for any duty to preserve to attach... One cannot keep what one does not have" *Id.* While the defendants in *Phillips* complained that that the defendants had "failed to keep [evidence] safe from harm or destruction." The court held that their complaint, which cited failures to (1) open emails received; (2) capture images which the email program would have displayed upon opening emails (3) click on hyperlinks within email; and (4) record URLs of websites to which the web browser would have been directed upon clicking those links, was actually a complaint for failure to *gather* evidence. The court went on to hold "[t]he law imposes no obligation on a party to gather evidence other than the requirement that a party have sufficient evidence to support their claim." *Id,* at 3.

The defendants' unsuccessful claim in *Phillips* mirrors the plaintiffs' claim in the case at bar. Here the plaintiffs complain that the defendants have not gathered information on google analytics, marketing, and web traffic data that may have been available to them at some undefined point in time. The plaintiffs failed to inquire as to whether any of the reports they seek were ever produced by the defendants. Instead, they base their assertions to this Court on deposition testimony establishing only that the witnesses have "viewed" or "reviewed" this data at some nebulous point in the past. Perhaps the plaintiffs suspect that the defendants did not produce these materials in the past. Perhaps the vague questioning, that elicited answers that are largely irrelevant to

their discovery requests, was unintentional. Whatever the explanation, the defendants should not now suffer as a result.

The defendants have stated to this Court that they do not have the analytics/marketing/web traffic data in their possession because those materials were never generated by the business. They maintain that claim. The plaintiffs failed to elicit any testimony at the Austin Depositions that suggests otherwise. As a result, the defendants should be under no duty to gather and produce these materials now for the plaintifs' benefit.

Just like the plaintiffs in *Phillips* failure to click attachments and hyperlinks in emails was not deemed violative of discovery orders, so should the court find that the defendants are not now violating the courts orders by failing to turn over analytics and marketing reports that were never produced.

## II. THE AUSTIN DEPOSITIONS DO NOT SUPPORT THE PLAINTIFFS' CONCLUSION THAT ANALYTICS AND MARKETING MATERIALS ARE IN THE DEFENDANTS' POSSESSION, CUSTODY, OR CONTROL

Should this Court find that the defendants owe a duty to produce the analytics/marketing/web traffic reports sought in plaintiffs RFP 14-17, the plaintiffs' have still failed to establish that those reports are now, or were ever, in the "possession, custody, or control" of the defendants - as is required for discoverable materials. The plaintiffs' suggestion that the Austin depositions "clearly and unequivocally establish that (1) extensive responsive data exists, [and] (2) FSS controls, accesses, and uses the data", lacks merit and is misleading to this Court. P 259.00, at 2.

The plaintiffs motion contains 11 pages of citations from their depositions. Nowhere in those 11 pages are questions asked, let alone answers given, to establish

that the materials that the plaintiffs now seek are in the possession, custody, or control of the defendants. Indeed, the plaintiffs' motion is devoid of any questions from the Austin depositions referring to Sandy Hook, or seeking to establish a nexus between the marketing/analytics materials sought and the Sandy Hook Shooting. No questions are asked of the witnesses attempting to identify the timeframe in which they viewed these documents. No attempt is made to relate the viewing of these materials to the Sandy Hook Shootings. Simply put, the questions that could have answered these essential issues were never asked.

The plaintiffs seem to propose that if the defendants ever viewed something or thought something related to their business or marketing it is now fair game for discovery. That is obviously not possible, nor is it the standard by which discovery is conducted.

Two tests have been employed by federal courts to determine the reach of a party's "possession, custody, or control." These tests are known as the "legal right test" and the "practical ability test". While the defendants contend that the Court's analysis should rightfully end upon a determination that the plaintiffs' are actually requesting that they *gather* ESI that was never in their possession, a brief overview of these tests is necessary to properly explain the inadequacy of the questioning by plaintiffs' counsel in the Austin depositions.

**A. Legal Right Test**

Electronically Stored Information is held to be within a party's custody or control not only when the party has actual possession or ownership of the information, but also when the party has "the legal right to obtain the documents on demand," *In re Bankers*

*Trust*, 61 F.3d 465, 469 (6th Cir. 1995), *cert. dismissed*, 517 US 1205 (1996). Jurisdictions applying this "legal right test" have found possession, custody or control where a contract grants a right of access to documents or when a party has a legal right to obtain the information upon demand by virtue of a principal-agent relationship, such as employer and employee, client and attorney, or a corporation and officer or director. For example, it is typical for third-party technology service providers or cloud-based software services to host their customers' data. Case law indicates that data a company can obtain on demand from a third party is data within the company's "control," see *Flagg v. City of Detroit*, 252 F.R.D. at 352 (court held that defendant was obligated to produce text messages stored with its third-party service provider because messages were within the defendant's control); *Tomlinson v. El Paso*, 245 F.R.D. at 477 (court held company had control of certain electronic ERISA records maintained for the company by a third-party service provider and, therefore, had to produce them).

**B. Practical Ability Test**

Some jurisdictions, however, have held that documents are under a party's control when the party has the 'practical ability' to obtain documents from a non-party to the action," as in *Bank of New York v. Meridien BIAO Bank Tanzania*, 171 F.R.D. 135, 146 (S.D.N.Y. 1997); see also *Tomlinson v. El Paso*, 245 F.R.D. 474, 477 (D. Colo. 2007) (documents are within a party's control "if such party has retained any right or ability to influence the person in whose possession the documents lie"); but see *Phillip M. Adams & Associates v. Dell*, 2007 WL 626355, at *3 (D. Utah Feb. 22, 2007) (noting how district courts have rejected the "practical ability" test). Application of the 'practical ability test' is difficult in practice. For example, when a third party received a majority of

its revenues from an organization, one court found that the organization likely had the ability to influence the third party into producing documents, as in Jacoby *v. Hartford Life and Accident Insurance*, 254 F.R.D. 477, 479 (S.D.N.Y. 2009).

Regardless of the test used, caselaw is consistent across jurisdictions in that parties are not required to actively produce or generate ESI not in their possession, custody, or control based on the discovery request of a party opponent.

In this case the Plaintiffs' complaint was filed more than five years after the Sandy Hook shootings.[3] The defendants were under no obligation to preserve any documentation over that period of time, nor did they have any reason to anticipate this litigation. The plaintiffs' suggestion that these analytics/marketing materials were once in their possession is of no consequence. They have not made any showing that these materials are currently in the possession, custody, or control of the defendants.

## III. THE AUSTIN DEPOSITIONS

On May 15-17, 2019, the plaintiffs conducted depositions of Dr. David Jones; Tim Fruge; and Michael Zimmermann in Austin Texas. The plaintiffs' memorandum under docket entry 259.00 cites extensively from the testimony elicited from these FSS employees to support their conclusion that, "the depositions clearly and unequivocally establish that (1) extensive responsive data exists, (2) FSS controls, accesses and uses the data." P 250.00, at 2. These conclusions do not logically follow from the questions asked, or the answers given, at the Austin depositions. The following section provides a brief overview of the testimony cited in the plaintiffs' memorandum.

Dr. David Jones RE: "Sales Analytics"

[3] The Sandy Hook Shootings occurred on December 14, 2012. The plaintiffs' complaint was filed on May 23, 2018.

Attorney Mattei questions Dr. David Jones regarding his definition of the term "sales analytics." This questioning concludes with the following exchange:

> Q: Right. So there is data that Free Speech has available that show -- that can show a spike in [high sales activity spikes] and -
>
> A: Theor -- theoretically that would be possible to do if you knew certain things happened on certain days and someone had access to analytics could go in and determine that.

Jones Dep., at 34-36

Plaintiffs' counsel continues to question Dr. Jones with the following exchange:

> Q: Right. Right. And as you mentioned that [web traffic data] is highly valuable, confidential and proprietary to Free Speech Systems and maintained by FSS, correct?
>
> A: Let us say that it is accessible to certain people within FSS but it is not really maintained by us.
>
> Q: Okay. So it may be hosted, for example, by a third-party vendor but controlled and accessible by FSS employees, certain FSS employees?
>
> A: Yes.

Jones Dep., at 45-46.

Plaintiffs' counsel continues inquiry into the matter of who has access to the web traffic data:

> Q: Yep. Who else other than Alex Jones has access to the data that you were describing from your affidavit, the marketing data, the sales analytics, the web traffic data?
>
> A: Well, it could -- probably Tim Fruge.

Jones Dep., at 49.

In summary plaintiffs' counsel elicited from Dr. Jones that: (1) FSS theoretically could produce data on sales spikes during broadcasts; (2) FSS has access to web traffic data maintained by a third-party vendor; (3) Tim Fruge has access to marketing,

analytics, and web data. Nothing in the testimony even come close to establishing that the defendants actually produced or viewed the materials sought by the plaintiffs. Likewise, nothing in the testimony proves that the defendants have ever had marketing/analytics/web data related to the Sandy Hook shootings in their possession, custody, or control.

Tim Fruge RE: Sales and Marketing Data

The plaintiffs' memorandum next goes on to provide highlights from their questioning of Tim Fruge.

First plaintiffs' counsel elicits a confession from Mr. Fruge that "FSS *does* standard marketing and analytics regarding product sales and promotions." Fruge Dep., at 14. (Emphasis added.) Plaintiffs' counsel continues to try and get more specific responses regarding what kind of marketing and analytics FSS does with the following inquiry:

> Q:... What kind of standard analytics does FSS do?
>
> A: We basically look and see -- if he decides to push a T-shirt, for example, and it sells really well, then we know we need to order mote T-shirt and sell more of those. If he decides to push another - a book and it doesn't sell, then we won't further push that book. And that's pretty much how we analyze. We kind of look and see what the best sellers and what people like and that's what we promote.

Fruge Dep., at 19.

The colloquy ends with plaintiffs' counsel eliciting from Mr. Fruge that FSS method of analysis for determining "what the best sellers are" is, "[w]e see what sells the best." Fruge Dep., at 19. Not exactly a groundbreaking revelation, and certainly not one that establishes that the defendants produced sales/marketing data related to Sandy Hook that was in the possession, custody, or control of FSS.

Plaintiffs' counsel also elicited admissions from Mr. Fruge that he has "*reviewed*" the following: (1) The Google Analytics account regarding InfoWarsStore.com, Id. at 34, and (2) what the top referring site to InfoWars.com is "over time"[4], Id. at 40.

In sum, the deposition of Tim Fruge netted the following information: (1) FSS "does" standard marketing and analytics regarding sales and promotions; (2) FSS' marketing strategy is "see what sells best"; (3) Fruge has reviewed the Google Analytics of InfoWarsStore.com; and (4) he knew the top referring sites to InfoWars.com "over time" to be DrudgeReport.com and Facebook (though he could not say which site took the top spot).

Again, the defendants are at a loss. These conclusions are irrelevant to the issue of FSS having produced or stored marketing/analytics related to Sandy Hook, let alone having possession, custody, or control of those documents at or after the time that the plaintiffs filed their complaint in May of 2018. At most, the plaintiffs have established that Fruge has seen Google Information on a screen.

Robert Dew RE: Web Traffic

The plaintiffs' deposed Robert Dew - the nightly news director for FSS. Dew admitted that he would track the number of views that InfoWars videos would get on YouTube. The following exchange took place between plaintiffs' counsel and Mr. Dew:

> Q: Okay. One -- one reason that you might track the popularity of a video on YouTube is because if you then put it on the Website or if you featured it on the broadcast that might generate additional audience, correct?
> ...
> A: Yes that is correct.

[4] Mr. Fruge testified that DrudgeReport.com and Facebook stand out as the top referring sites "over time." He could not identify "particular time periods" when one site stood above the other in terms of referrals. Fruge Dep., at 40.

Q: And one of the principal reasons that that's important is because the more traffic there is on the InfoWars dot-com website the more revenue is generated from the Info Wars store, correct?

A: I don't know if that always happened that way, but in general, yes, you want to increase your audience, yes.

Q: But you know that to be true, that the larger the audience at InfoWars.com the more revenue is derived from the InfoWars store, correct?

...

A: Yeah. I mean, *I've never seen any numbers*, but I think the law of averages would say if you have an increased audience youre going to have increased revenue.

Q: But based on your extensive experience at FSS you do know that one of the objectives of FSS is to increase traffic to InfoWars.com so that it increases revenue through its store, correct?

A: Yes, but I would say our primary goal is putting out information and that's what it's always been.

Fruge Dep., at 33-34. (Emphasis added.)

Through Mr. Fruge the plaintiffs were able to establish: (1) that he monitored the number of views of InfoWars YouTube videos[5]; and (2) one of the goals of FSS is to generate profit. Again, the testimony of Mr. Fruge in no way established that the defendants' are in possession of or ever produced marketing/analytics/sales/web data related to Sandy Hook - much less that those materials are currently in the possession, custody, or control of the defendants. The plaintiffs seem to suggest that the defendants are running a sophisticated, albeit hidden, data and analytics operations; the available facts, however, do not bear that suggestion out.

Michael Zimmermann - RE: Web Traffic

[5] The act of monitoring the number of views on a YouTube can be accomplished by any individual viewing a content creators homepage on the site. This is publicly available information.

Finally, the plaintiffs' deposed Michael Zimmermann, IT manager at FSS. Mr. Zimmermann testified that he was hired by FSS in September of 2015 as a videographer and editor and was promoted to IT manager in late 2018[6]. Zimmermann Dep., at 10.

Mr. Zimmermann testified that he reviews and considers web traffic data in connection with his role as FSS IT Manager, a position he had been promoted to just *six months* prior to his deposition. Zimmermann testified that he "looked at" Google Analytics, "to see how our web traffic is doing compared to either the previous year or the previous month to see if your traffic is going up, going down, just to get an idea of the -- the trends of your -- your web traffic. Zimmermann Dep., at 22. He further testified that he will occasionally meet with Alex Jones and/or Tim Fruge about the web traffic data. Zimmermann Dep., at 25.

Through the deposition of Mr. Zimmermann, the plaintiffs were able to establish: (1) Over the past six (6) months Mr. Zimmermann has reviewed web traffic via Google Analytics, and (2) he occasionally reviews these findings with Alex Jones and/or Tim Fruge. Once again, the testimony of Mr. Zimmermann fails to establish that defendants' are in possession of or ever produced marketing/analytics/sales/web data related to Sandy Hook. Furthermore, the testimony from Mr. Zimmermann regarding his actions as FSS IT manager - a position that he has held for six (6) months - is wholly irrelevant to what was done at FSS in December of 2014 at the time of Sandy Hook. Mr. Zimmermann was not even employed by the company at that time.

[6] The Sandy Hook shootings occurred on December 12, 2014.

The plaintiffs' present the forgoing deposition testimony from Dr. Jones, Tim Fruge, and Michael Zimmermann to support the proposition that "it is self-evident and undeniable that FSS access, control and uses data responsive to RFP's 15 and 16, and has failed to produce it in violation of this Court's order." P 259.00, at 10. They know better. Nothing in the forgoing testimony proves anything more than these witnesses occasionally *view* analytics/marketing/web reports and occasionally discuss them with other members of FSS. Nothing in the forgoing testimony suggests that the witnesses ever *produced* the documents that are sought in RFP 15 and 16 - much less that they are still in possession of those produced reposts. Nowhere in the forgoing questioning were the witnesses ever asked about analytics/marketing/web reports produced in relation to the Sandy Hook Shooting. Plaintiffs' attorneys never referred to a time frame in their questioning, nor did they even mention the name Sandy Hook in any of the deposition excerpts presented in their supplemental memorandum.

The defendants were under no duty to retain materials that may have been produced in relation to a tragedy that took place nearly 5 years ago, until the plaintiffs' filed their complaint in May of 2018. The defendants are not now required to affirmatively gather and produce documents maintained by antagonistic third parties in order to help the plaintiffs make their case. The defendants should not now suffer because of the ineffective and circuitous depositions taken in Austin. Simply put, plaintiffs attorneys failed to ask straight forward questions that would have put an end to this discovery fight. Those questions were simple: "Do you store marketing data?"; "Where do you store marketing data?"; "Is this data kept in the regular course of

business?"; "upon what parameters is this data taken?" "With what frequency is this data taken/produced?"

Not once were these direct questions asked. Perhaps the plaintiffs feared the answers that they might get. The plaintiffs asked artful questions at the expense of getting the answers that they were looking for and needed. The defendants should not now be required to produce documents on the basis of these fuzzy depositions.

## IV. Requiring Production Of Analytics From An Adverse And Openly Hostile Third Party Is Fundamentally Unfair.

Should this Court find that the defendants: (1) have a duty to gather the marketing and analytics materials that have not previously been produced by the defendants in the regular course of business; and (2) that those materials are now in the possession, custody or control of the defendants - the defendants' argue that the third parties that host this data, namely Google, have been so openly hostile toward the defendants' as to make any information gleaned from their services unreliable, and mandate disclosure of these materials fundamentally unfair.

The Google Analytics that plaintiffs seek are not within the defendants" possession, custody, or control. They are in the possession and maintained by Google. Google's bias and disdain toward the defendants has been open and notorious. Mr. Jones' videos were removed from YouTube (owned by Google), his channel banned, and upon information and belief his videos blacklisted and buried in search results long before the formal ban even took place. The plaintiffs now request that the defendants produce these reports from a corporation who is essentially a party opponent.

On or around August 6, 2018 Mr. Jones' accounts on Facebook, Apple, YouTube (owned by Google), and Spotify were terminated, and he was banned from posting further content on their sites. Each of these sites banned InfoWars within a 12-hour period. The stated reasons for the ban from each of the sites involved allegations that Mr. Jones and InfoWars was engaging in "hate speech" which violated the respective sites terms of service. Facebook stated that they were shutting down Mr. Jones' pages for "glorifying violence, which violates our graphic violence policy, and using dehumanizing language to describe people who are transgender, Muslims and immigrants, which violates our hate speech policies." https://newsroom.fb.com/news/2018/08/enforcing-our-community-standards/. YouTube stated that InfoWars had been banned for violating "policies against hate speech and harassment..." https://www.npr.org/2018/08/06/636030043/youtube-apple-and-facebook-ban-infowars-which-decries-mega-purge. Similarly, Apple characterized InfoWars content as "hate speech," in justifying its ban.

Just this month, YouTube modified its policies and community standards, citing a need to "protect the YouTube community from harmful content." In a June 5, 2019 blog post, YouTube specifically references the defendants - placing them into a category of "hateful and supremacist content." YouTube is clearly referring to the defendants when stating, "we will remove content that well-documented violent events, like the Holocaust or the shooting at Sandy Hook Elementary, took place." This reference occurs in a sentence immediately following an explanation of their banning "videos that promote or glorify Nazi ideology." https://youtube.googleblog.com/2019/06/our-ongoing-work-to-tackle-hate.html. The proximity of a direct reference to the defendants and Nazism is

not lost on the reader and is no mere coincidence. Google and YouTube's contempt for the defendants' is clear, as they have persisted in a campaign not only to silence them but to demonize and vilify them as well. As a result, the defendant views any reports generated by their Analytics services as inherently unreliable.

The analytics and reports requested by the plaintiffs are not akin to banking and financial records - produced as a matter of course in a civil case. These are analytical reports out of the defendants' control. The defendants have no way of confirming the accuracy of the analysis presented in such reports. They were maintained and will be produced by a corporation that has been openly antagonistic to the defendants for the very reasons that the plaintiff raises in their complaint in this case. For the Court to order the gathering and production of these analytics from a company so openly intent on destroying the defendants' financial interests and reputation would be fundamentally unfair.

## V. THE INFORMATION FROM MR. JONES' PHONE

The plaintiffs request for the information from Mr. Jones' phone is subject to the same analysis as above. This is coupled with the modern reality that cell phones are disposable commodities in the modern age. Upon Information and belief, Mr. Jones replaces his phone frequently, a minimum of one time per year. Much of the data the plaintiffs seek - with a relevant time period of December of 2014 and the following months - will no longer be on his phone. Mr. Jones has gone through five or more cellphones in that time.

This is especially true in the plaintiffs' request for Mr. Jones text messages. Upon information and belief Mr. Jones uses AT&T as a carrier. Text message

information is stored for a very brief amount of time by cellular providers. Upon information and belief, AT&T does not store the SMS (text message) content of its users. Couple this with the frequency with which Mr. Jones replaces his phone, and Mr. Jones may have available text messages from as far back as May of 2017. There is little to no possible nexus between the personal text messages of Mr. Jones from May of 2017 to the Sandy Hook shootings that occurred in December of 2014. The plaintiffs are simply using this as a tactic to pry into the personal affairs of Mr. Jones.

## VI. CONCLUSION

For all of the reasons stated herein, the plaintiffs respectfully request that this Court limit the discovery to what has previously been provided to the plaintiffs and the most recent round of Google Analytics that was voluntarily disclosed by the defendants.

Alex Jones;
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## CERTIFICATION

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